

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority )  
to Transfer the Facilities of )  
MHC SYSTEMS, INC. and ) Docket No. 000277-WS  
Certificate Nos. 353-W and 309-S )  
in Lee County, Florida to )  
NORTH FORT MYERS UTILITY, INC. )  
\_\_\_\_\_ )

NORTH FORT MYERS UTILITY, INC.'S  
RESPONSE IN OPPOSITION TO PINE LAKES ESTATES HOMEOWNERS'  
ASSOCIATION, INC.'S PETITION FOR LEAVE TO INTERVENE

NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response in Opposition to Pine Lakes Estates Homeowners' Association, Inc.'s ("HOA") Petition for Leave to Intervene and states:

1. Although NFMU has no knowledge with regard to the members of HOA, it does appear from the records of the Florida Department of State that it is a valid not for profit corporation. However, the records of the Department of State reflect that as of June 5, 2000, the President of HOA was Barb Stanze and not Leon Beekman, who signed the Petition. Subject to HOA proving its standing at any formal hearing, NFMU acknowledges that based upon its statements, HOA's interests are affected by this proceeding.

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC \_\_\_\_\_  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

11-296 NOV-68

FPSC-RECORDS/REPORTING

2. The Petition is deficient in that it does not state any facts which would warrant denial of the transfer. HOA is candid in admitting that it does not know of any facts which would warrant denial of the transfer, but wants an opportunity to try to discover such facts. The purpose of Commission Rule 25-22.036(4) is to put the opposing party on notice of the basis of the party's claim. A party cannot be allowed to intervene in opposition to a transfer application without any factual basis. If the Commission decides to allow intervention by HOA, then it should require HOA to clearly articulate the factual basis for its position.

3. Pursuant to Rule 25-22.039, Florida Administrative Code, interveners take the case as they find it. HOA did not file a timely protest, and thus does not enjoy all of the rights of a true party. NFMU has taken the deposition of Mr. Varga, the only objecting party in this proceeding, and has filed a Motion for Summary Final Order. Any intervention by HOA should not be allowed to defeat any otherwise appropriate summary disposition of this matter.

WHEREFORE, NFMU requests this Commission take the following action with regard to HOA Petition for Leave to Intervene:

1) Deny such Petition, or in the alternative, grant the Petition subject to compliance with procedural rules within 15 days of the date of the Order granting intervention; and

2) Require HOA to prove its standing at any upcoming final hearing; and

3) Address this Motion at the same agenda at which NFMU's Motion for Summary Final Order is addressed since the granting of summary disposition will render HOA's motion moot; and

4) HOA's intervention does not allow it to expand issues beyond those raised by the parties.

Respectfully submitted on this  
6<sup>th</sup> day of November, 2000, by:

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By:   
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to Petition for Leave to Intervene was forwarded via U.S. Mail this 6<sup>th</sup> day of November, 2000 to:

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